

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of

Request to Re-Open the Petition for	)	RM 8658
Rule Making Regarding Hearing	)	Petition for Rule Making
Aid-Compatible Telephones	)	Section 68.4(a)

**Comments of the Arizona Commission for  
the Deaf and the Hard of Hearing**

**Introduction**

The Arizona Commission for the Deaf and the Hard of Hearing (ACDHH) would like to comment on the Notice of Proposed Rulemaking #8658. ACDHH hopes that this will lead to productive discussion which will clearly show the need for immediate revocation of current exemptions on hearing aid compatibility.

The comments provided herein are divided in two areas. First we comment on each of the four criteria that make up the FCC revocation test. And in the second part we comment on other select statements called for public comment.

ACDHH wonders whether further limitations on exemptions rather than revocation would better serve the public interest. On this, there are several points that ACDHH wishes to address:

- All everyday telecommunications technologies must be accessible to users of hearing aids, including cochlear implants and other assistive listening devices. (“Everyday technologies” here include digital wireless telephones.)
- All emergency and courtesy telephones must be accessible to users of hearing aids, including cochlear implants and other assistive devices. (Emergency telephones are already required to be compatible although they are not given special technical distinction by the FCC.)
- Accessibility should extend into comfort, meaning that feedback should be removed and external parts, cumbersome or not, should not be necessary.

A “chicken-or-egg” question has been posed to the deaf and the hard of hearing: whether the deaf and the hard of hearing are themselves disabled or by the circumstances. People with hearing loss are not disabled in the sense others are; they are disabled because of communicative barriers, and not because of their hearing loss. To render ineffective

hearing aids, including cochlear implants, would be an example of a communicative barrier.

To permit the continuation of the exemptions would be to regress the rehabilitative progress made by tens of thousands of deaf and hard of hearing individuals to become able participants in society. To permit the continuation of the exemptions would effectively imply that their interests are outside public interest, as the language is spelled in the criteria. To permit the continuation of the exemptions would be to condone the exclusion hearing aid manufacturers have shown toward people needing hearing aids in the past 12 years, ever since the 1989 passage of Section 255.

Our view is different from that of the FCC's. ACDHH looks at the quality of life affected by the compromised accessibility. ACDHH presumes that people with hearing loss are as entitled to the access to digital wireless technologies that the rest of the public enjoys.

ACDHH would like nothing less than full accessibility. But in response to the suggestion of fewer exemptions, ACDHH cautions that the industry and future legislative bodies may take this to imply that fluctuating accessibility is acceptable and perhaps not push for contemporary accessibility as newer technologies impacting telecommunications come out.

ACDHH understands that not all communication apparatuses are for general use; however, it is ACDHH's explicit concern that limitations are not offered here as a concession to the telecommunications industry.

ACDHH does not presume to be a technically proficient organization but wishes that hearing aid manufacturers and other industries would coordinate their efforts. The cochlear implant manufacturers, as an example, has to be disappointed that their progress has been impeded, and threatens to be negated, by advances in telephony and the absence of initiative the manufacturers themselves have shown for compatibility. This might very well be the second coming of the irony that began with the invention of the telephone: Alexander Graham Bell first worked on it as an assistive listening device for the deaf and the hard of hearing, and it unintentionally became the great divider between them and the greater society for decades, a gulf that still has bridgework ahead.

#### **Discussion A: FCC Criteria for revocation of exemptions**

1. such revocation or limit is in the public interest;
2. continuation of exemption without such revocation would have an adverse effect on hearing-impaired individuals;
3. compliance with the requirements of [the rule] is technologically feasible for the telephones to which the exemptions applies; and
4. compliance with requirements of [the rule] would not increase costs to such an extent that the telephones to which the exemptions applies could not be successfully marketed.

ACDHH does not see who would claim that conditions #1 and #2 are not yet met, except perhaps the hearing aid manufacturers. It should come as no surprise that these manufacturers claim that the neckloop set is a viable solution. For technical and economic reasons already identified by the FCC, there needs to be better compatibility.

The adverse effects of the exemptions are also found on the hearing populations. Hearing aid users number well into the millions, making for many players in the mainstream society. When these individuals are communicatively isolated, the adverse effect is felt across the board; businesses lose out on paper and in resources, families and friends bear some degree of psychological impact, and agencies at all levels have to step up with support services. ACDHH wonders whom in the public would the exemptions not affect adversely.

Conditions #3 and #4 are entwined, and ACDHH would like to remind the public that this is a common tactic. Choosing to delay manufacturing until technology catches up often does not happen without a mandate. FCC Commissioner Harold Furchtgott-Roth was quoted in reference to Section 255, "This particular area of regulation may well be a rare instance where the involvement of the federal government introduces efficiencies unlikely to develop in the market."

Feasibility (conditions #3 & #4) should not be weighted equally as public interest (conditions #1 & #2). As with progress in analog hearing aid compatibility since 1989, feasibility can come around only after a mandate, when it also becomes the interest of the manufacturers.

## **Discussion B: Selected questions seeking public comments**

Here ACDHH addresses points considered worthy of attention and elaborates on others. It is the opinion of ACDHH that a glossary should be included in the legislation should there be a revocation or limitation. Terms needing specifications are: "hearing aid," "everyday telecommunications technologies," and "emergency telephones."

1. The extent to which exemptions should be limited, if not revoked.

If exemptions are further limited in scope, hearing aids should nevertheless be required to be compatible with technologies regarded as essential, including wireless digital telephones.<sup>1</sup> Although not everyday telephones, emergency and courtesy phones that are stationed everywhere also need to be usable by users of hearing aids.<sup>2</sup>

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<sup>1</sup> Celltech sarl reports 67 million digital wireless users

<sup>2</sup> AGBADHH reported that annually over 43 million calls to the emergency numbers are made from wireless phones

This would bring deaf and hard of hearing persons to equal advantage with the majority of devices generally accepted to be essential in the current and in the future.

2. Whether the language of the exemptions seems to mean that application is only to hearing aids designed to be compatible, insinuating that some models are not designed to be compatible.

This is where a technical specification for hearing aids has to come into play. The Rehabilitation Engineering Research Center on Hearing Enhancement offers only the function: “The primary purpose of any hearing aid is to improve a hearing-impaired person's access to acoustic events. Our explicit goal must be a hearing that optimizes speech comprehension for commonly encountered listening situations.”

If a manufacturer would like to circumvent regulation by marketing their product as something other than a hearing aid, it cannot be as a “sound enhancer,” a “noise filterer,” an “amplifier,” or anything of the sort.

If the language is ambiguous here, a review should seriously consider a revision to make the language indisputably for all hearing aids, no matter their commercial function, as long as the device meets the FCC technical definition and specifications of hearing aid. This is the spirit in which Section 255 was passed in 1989.

3. Would limiting exemptions to require PCS technology only to be HAC sufficiently serve the public interest on this matter?

This would nevertheless be taken as a victory. But this appears to be a gesture not built on the principle of equal accessibility for all. ACDHH would like to secure future compatibility as well and not leave the door ajar for future incompatibility as technology continues to outpace hearing aid development.

Former FCC Chairman William Kennard identified this as an important matter to the deaf and hard of hearing who “must be provided with the same wireless technologies available so that they may share in the benefits of these technologies and live safer, healthier lives.”

Self-Help for the Hard of Hearing, Inc. (SHHH) said in a 2000 paper regarding a notice on the elimination of analog telephones, “Hard of hearing consumers have no desire to be stuck in an analog technology ‘ghetto.’ . . . Consumers with hearing loss want digital equipment and the full panoply of digital services that are available to hearing consumers, to be compatible with hearing aids.”

So, let it be established, without addressing whether ensuring compatibility with digital wireless telephones would be satisfactory, that it is the wish of numerous voices that PCS technology be available to them.

4. Is the continuation of exemptions as is the current circumstance adverse to the deaf and the hard of hearing?

ACDHH opts not to comment on the emotional and psychological well-being of users of hearing aids in the earlier discussion. Instead, here are excerpts from other papers that were filed. Suffice to say, ACDHH believes that users of hearing aids are harmed when they lose the independence they knew.

“This failure to provide hearing aid compatibility is a very distinct form of discrimination. The cell phones I have met so far are dead silent to my aids. I got stranded in the left turn lane at a very busy intersection and could not call for help. Finally someone stopped and offered me a cell phone. GREAT! Not so, I gave him the number to call and who to ask for and what message to give as I could hear nothing on the phone.”

–Alice Murphy, November 11, 2001

“We are adults, professionals and careerists who are required to use telephones everyday. ...Including digital wireless handsets under the Hearing Aid Compatibility Act, to us, is an important measure toward assuring that people like us will not be marginalized from use of the telephone.”

–Dale Young of the San Francisco Hearing Impaired Professionals, December 8, 2000

ACDHH does not see how those testimonies, simply two of many filed and many, many more not filed, can be taken to mean that the continuation of the exemptions would be a service to today's hearing aid users.

5. Ways the commission can be assured that HAC will be taken into consideration during the design, development and manufacturing of wireless handsets and any newer technology

Remove the exemptions. It then becomes a legal mandate, enforceable in court. That would assure consideration of HAC. We have the history of the successful compliance with analog hearing aids to support this.

Test groups consisting of hearing aid users could be used at various stages of research and testing. After development, consumer groups and advocacy organizations representing the deaf and the hard of hearing could be contacted to see about interest in training so that they can give appropriate referrals to vendors and distributors or display product information in their offices.

Already participating are the organizations that make up the Wireless Access Coalition. This is a start and their combined input should be valuable.<sup>3</sup>

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<sup>3</sup> Self Help for Hard of Hearing People, Inc., Alexander Graham Bell Association for the Deaf and the Hard of Hearing, Universal Service Alliance for Technology Access, Hearing Society of the Bay Area, Hearing Impaired Professionals, and California Foundation for Independent Living Centers

6. What actions can be taken to ensure that training for manufacturers and service providers on accessibility issues occurs

Partnerships would have to be created between distributors, vendors, and manufacturers and appropriate organizations representing the deaf and the hard of hearing populations. Examples of national organizations with a possible interest are the National Association of the Deaf, the Alexander Graham Bell Association for the Deaf and Hard of Hearing, the Better Hearing Institute, SHHH, the Cochlear Implant Association, Inc., and ALDA, Inc. These organizations' established contacts and resources certainly could expedite the development of a full menu of resources.

ACDHH wants to point out that starting with the 1989 passage of the Act, hearing aid compatibility has become a challenge we are obligated to keep on presenting to ourselves.

### **Ourselves**

ACDHH is primarily concerned with ensuring, in partnership with the public and private sector, accessibility for the deaf and the hard of hearing to improve their quality of life. The continued exemptions injures the communicative environments in which the hearing interact with the deaf and the hard of hearing. The resultant is reduced accessibility that decreases the quality of life and productivity for all populations involved.

In keeping with our vision statement, ACDHH strives to identify needs in Arizona, and to develop and implement programs and activities to meet those needs. With that, we enthusiastically volunteer ourselves as a resource should this Rulemaking reach state-level involvement.